IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

FRIDAY, THE 28TH DAY OF SEPTEMBER 2007/6TH ASWINA, 1927

Crl.Rev.Pet.No. 3512 OF 2007)

CRL.APPEAL NO. 47O OF 2004 OF SESSIONS COURT (ADHOC-I), KOTTAYAM
IN C.C. 118 OF 2003 OF CJM, KOTTAYAM

REVN. PETITIONER: APPELLANT/ACCUSED.

JOY LUKOSE 2 JOY, KARAKKADA HOUSE,
NEAR GURUMANDIRAM, MANNANAM, KOTTAYAM

ADVS. M/S. MOHAN IDICULA ABRAHAM

RESPONDENTS: COMPLAINANTS.

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1. JOHN T. MATHEW, THENGUMPLACKAL HOUSE,
GANDHINAGAR P.O. KOTTAYAM

2. STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM

ADV. SRI. P.V. BALAKRISHNAN

PUBLIC PROSECUTOR SRI.K.S. SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 28-09-2007 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V.RAMKUMAR, J.

Crl.R.P. No. 2551 of 2005

Dated: 6-8-2007

ORDER

This Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in C.C. No.614 of 1999 on the file of the J.F.C.M., Vadakara, challenges the conviction entered and the sentence passed against him for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the appellant in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus

rightly entered against the petitioner.

4. Pursuant to the direction of this court, the revision petitioner has deposited the entire cheque amount of Rs. **1,60,000/- (Rupees one lakh sixty thousand only)** before the trial court and the said amount has been released to the first respondent with the consent of the 2nd respondent both of whom are the legal representatives of the complainant deceased Ammed Haji. The said amount shall be treated as compensation paid under Section 357 (3) Cr.P.C.

5. What remains is the question of undergoing the sentence of imprisonment till rising of court for which purpose the petitioner shall appear before the trial court on **22-8-2007.** The sentence of imprisonment till rising of court imposed in this case as well as in **Crl.R.P. 2536** of 2005 arising from **C.C. No. 600 of 1999** shall run concurrently.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

V. RAMKUMAR, JUDGE.

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